

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

ALICE H. ALLEN, et al.,

Plaintiffs,

V.

Civil Action No. 5:09-CV-00230-cr

DAIRY FARMERS OF AMERICA, INC., and

DAIRY MARKETING SERVICES, LLC,

Defendants.

**DAIRY FARMER SUBCLASSES' MOTION FOR PRELIMINARY APPROVAL
OF DECEMBER 2015 SETTLEMENT WITH DEFENDANTS DAIRY
FARMERS OF AMERICA, INC. AND DAIRY MARKETING SERVICES, LLC**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the DFA/DMS and Non-DFA/DMS Farmer Subclasses (“Subclasses”), through Subclass Counsel, hereby move for the preliminary approval of the December 22, 2015 settlement agreement (“Settlement Agreement” or “Settlement”) (attached as Exhibit A to Dairy Farmer Subclasses’ supporting memorandum, filed concurrently herewith (“Memorandum”) between the Subclasses and Defendants Dairy Farmers of America, Inc. (“DFA”) and Dairy Marketing Services, LLC (“DMS”) (collectively, “Settling Defendants”).

The Subclasses respectfully request that the Court preliminarily approve the Settlement, approve the proposed Notice of Proposed Settlement for mailing and the proposed Summary Notice of Proposed Settlement for publication substantially in the form attached as Exhibit D and Exhibit E to the Memorandum, as well as the proposed plan for dissemination of the notices. Accordingly, the Subclasses move for entry of the proposed Order (filed concurrently with this Motion), providing, *inter alia*:

1. The Settlement is preliminarily approved and is sufficiently fair, reasonable, and adequate to authorize dissemination of notice of the Settlement to the Subclasses;

2. the Notice and Summary Notice substantially in the proposed form are approved to notify the Subclasses of the Settlement;

3. the proposed plan for dissemination of the Notice and Summary Notice constitutes the best notice practicable under the circumstances, is due and sufficient notice and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States;

4. no later than 30 days after the entry of an Order preliminarily approving the Settlement, Subclass Counsel shall file any motion for attorneys' fees, reimbursement of expenses, and incentive payments for the Subclass Representatives;

5. the Court will hold a hearing concerning final approval of the Settlement no earlier than 90 days after entry of an order granting preliminary approval on a date convenient for the Court ("Fairness Hearing");

6. any person who did not previously exclude themselves from the Subclasses but wishes to be excluded from this Settlement may opt-out of the Settlement by submitting an Exclusion Letter to the Claims Administrator at least fourteen (14) days prior to the Fairness Hearing;

7. any person who timely requested exclusion from the Subclasses may apply to the Court to be reinstated to the Subclasses by setting forth the reasons for seeking reinstatement in a document received by the Claims Administrator at least fourteen (14) days prior to the Fairness Hearing;

8. any Subclass member who objects to the Settlement must do so in writing no less than fourteen (14) days prior to the Fairness Hearing;

9. any Subclass member who wishes to inform the Court of their support of the Settlement may do so in writing no less than fourteen (14) days prior to the Fairness Hearing;

10. any Subclass member who timely submitted an eligible claim in relation to the 2014 Settlement with DFA and DMS, and who wishes to receive payment from this Settlement, does not need to submit a new claim form;

11. any Subclass member who wishes to be eligible for a payment as a result of the Settlement, but who did not submit a claim form in connection with the prior Settlement, shall submit to the Claims Administrator a complete claim form provided with the Notice so it is received or postmarked no less than fourteen (14) days prior to the Fairness Hearing;

12. Subclass Counsel shall file with the Court, and serve upon counsel of record, the necessary papers to show notice was disseminated in compliance with the Court's Orders, as well as any other materials Subclass Counsel wishes the Court to consider, at least seven (7) business days prior to the Fairness Hearing;

13. any Subclass member who seeks to appear and be heard at the Fairness Hearing shall provide notice to the Clerk of the Court and to counsel of record at least fourteen (14) business days prior to the Fairness Hearing;

14. the monetary consideration by Settling Defendants ("Settlement Fund"), as set forth in Section 7 of the Settlement Agreement, is a "Qualified Settlement Fund" pursuant to Treas. Reg. §1.468B-1, and Subclass Counsel and their designees are authorized to use up to \$100,000 of the Settlement Fund to give notice of the Settlement to Subclass members and for administration costs, up to \$10,000 of the Settlement Fund for escrow agent costs, and such

amount of the Settlement Fund as is required to pay taxes on income earned on the Settlement Fund, with prior notice to Settling Defendants;

15. Rust Consulting, Inc. is appointed as Claims Administrator for purposes of notice and administration of the Settlement, and JPMorgan Chase Bank, National Association, shall serve as the escrow agent in connection with the Settlement Fund as set forth in the Settlement Agreement;

16. all proceedings against Settling Defendants, except those proceedings provided for or required by the Settlement Agreement, are stayed; and

17. Plaintiffs and members of the Subclasses are preliminarily enjoined from the initiation, commencement, or prosecution of any Released Claim against any of the Settling Defendants.

Dated: January 15, 2016

Respectfully submitted,

/s/ Robert G. Abrams

Robert G. Abrams, Esq.
Robert J. Brookhiser, Esq.
Gregory J. Commins, Jr., Esq.
Terry L. Sullivan, Esq.
Danyll W. Foix, Esq.
Baker & Hostetler LLP
Washington Square, Ste. 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036
Tel: (202) 862-1500
rabrams@bakerlaw.com
rbrookhiser@bakerlaw.com
gcommins@bakerlaw.com
tsullivan@bakerlaw.com
dfoix@bakerlaw.com

/s/ Daniel Smith

Daniel Smith, Esq.

/s/ Kit A. Pierson

Kit A. Pierson, Esq.
Benjamin D. Brown, Esq.
Brent W. Johnson, Esq.
Emmy L. Levens, Esq.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Ave., N.W.
Ste. 500, West Tower
Washington, DC 20005
Tel: (202) 408-4600
kpierson@cohenmilstein.com
bbrown@cohenmilstein.com
bjohnson@cohenmilstein.com
elevens@cohenmilstein.com

David A. Balto, Esq.
The Law Offices of David A. Balto
1350 I St, N.W., Suite 850
Washington, DC 20005
Tel: (202) 789-5424

16 State St.
PO Box 801
Montpelier, VT 05601
Tel: (802) 229-6661
dmsith@gmavt.com

/s/ Richard T. Cassidy

Richard T. Cassidy, Esq.,
Hoff Curtis, P.C.
100 Main St,
Burlington, VT 05401
Tel: (802) 316-4962
rcassidy@hoffcurtis.com

Emily J. Joselson, Esq.
Lisa B. Shelkrot, Esq.
Langrock Sperry & Wool, LLP
210 College St.
P.O. Box 721
Burlington, VT 05402
Tel: (802) 864-0217
ejoselson@langrock.com
lshelkrot@langrock.com

Counsel for the non-DFA/DMS Subclass

david.balto@yahoo.com

Andrew D. Manitsky, Esq.
Lynn, Lynn, Blackman & Manitsky, P.C.,
76 St. Paul St., Suite 400
Burlington, VT 05402
Tel: (802) 860-1500
amanitsky@lynnlawvt.com

Counsel for the DFA/DMS Subclass

CERTIFICATE OF SERVICE

I, Brent W. Johnson, certify that a true and correct copy of the foregoing *Dairy Farmer Subclasses' Motion for Preliminary Approval of December 2015 Settlement with Defendants Dairy Farmers of America, Inc. and Dairy Marketing Services, LLC* was served this 15th day of January, 2016, on all counsel of record by ECF.

/s/ Brent W. Johnson
Brent W. Johnson